ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION I

CA05-429

December 20, 2006

APPEAL FROM THE DREW COUNTY CIRCUIT COURT
[97-196-1]

CHESTER BUTLER, ET AL.
APPELLANTS

V.

HONORABLE JERRY E. MAZZANTI, JUDGE

LEON HARVEST
APPELLEE

REVERSED AND REMANDED

This case involves members of two religious entities formerly known as the Bold Pilgrim Missionary Baptist Church and the Isaac Chapel Missionary Baptist Church. The appellants filed a complaint in 2002 seeking injunctive relief against appellee, Leon Harvest. In the complaint, they alleged that appellee was illegally using the Bold Pilgrim Missionary Baptist Church facility. The trial court found in favor of appellee. The sole issue on appeal is whether the trial court erred in the manner in which it calculated the majority vote of the members of the two churches. We hold that it did.

This case centers around a joint meeting of both congregations that was held on December 1, 2001. The purpose of the meeting was to decide whether to join the two

congregations, and notice of the meeting was announced to the congregations on several preceding Sundays. The minutes of that meeting reflect in pertinent part that John S. Montgomery, who was the pastor of both churches at the time, presided at the meeting and that:

> Those present who were in agreement to unit[e]: Chester Butler, Hercules Butler, Rubye Shepard, Ella Mae Jordan, Robert McCullough, Helen McCullough, Diane Ridgell, Elizah Graham, Jessie Cook, and Regina Montgomery leaving Leon Harvest disagreeing to union.

Subsequent to that vote, appellee, Leon Harvest, who had been a member of Bold Pilgrim Missionary Baptist Church his entire life, continued to use the Bold Pilgrim facility for worship services, and appellants filed the action leading to this appeal.

Following the hearing on this matter, the trial court found, *inter alia*, that "[t]he vote was nine members to one in favor of uniting the two congregations"; that "[f]rom the testimony of John Montgomery, the Court finds that a decision to combine two congregations requires a majority vote of the members of both congregations"; and that "[t]here has not been a vote by the majority of the members of Isaac Chapel Church and Bold Pilgrim Church to combine the two congregations." That is, the trial court concluded that the vote had to be by a majority of the total membership of each church, not just a majority of the members who were present and voting at the meeting. We disagree.

In *McCree v. Walker*, 81 Ark. App. 281, 284-85, 101 S.W.3d 276, 278 (2003), this court explained:

> Baptist churches are congregational churches in form and structure. In congregational churches, the affairs of a particular church are determined by the vote of the majority of the members of that church and not by some other hierarchical form of church government.

(Citations omitted.) The *McCree* court cited *Carter v. Phillips*, 291 Ark. 94, 722 S.W.2d 590 (1987), for the same proposition.

In the instant case, appellee testified in part that "it is a fact that the way Bold Pilgrim operates is when you get ready to make a decision, we have a church meeting. And somebody makes a motion. Somebody seconds it. When a question is put before the body, the majority votes win." He further testified as follows:

> I was there at the meeting, I recall it being a meeting where there was some discussion about joining with Isaac Chapel, Bold Pilgrim and Isaac Chapel. I was there at the meeting and I heard what was said. I can't remember if a vote was taken. I can't remember whether it was a vote or what it's been so long ago. I remember what I had said at that meeting. I told them it's for everybody to agree all except three people, I mean, two, two people. *And then I got up and – All the people agreed to go up there to Isaac Chapel.* I just told you that I didn't remember a vote on that. Well, you know, I can't even understand what you've been saying.

(Emphasis added.) Appellee also testified that he had continued to worship at the Bold Pilgrim facility and that events had continued to be held at the facility, including the church's sixty-second anniversary celebration.

Rev. Larry Jordan testified that he had been pastor of the Bold Pilgrim church from 1990 to 1993; that he had held several other posts within the Baptist organization; and that "by [his] doctrine and [his] method of operation, this vote was done properly."

Pastor John Montgomery testified that the meeting planned for December 1, 2001, had been announced at both churches several Sundays prior to the meeting because it was going to affect both churches; that "all of the membership were told in the announcement if there was anyone not present to tell them to be sure and be at the meeting"; that a motion was brought to the floor at the December 1 meeting and properly seconded; and that it was his position that as a result of the vote taken in that meeting Bold Pilgrim joined with Isaac Chapel to form one entity. While Rev. Montgomery testified about several other matters, the testimony most pertinent to this appeal includes the following:

> It is normal procedure that we take *a majority of the people that are present at the time of the vote.* It is my testimony that all of the people, whether they were Bold Pilgrim or Isaac Chapel, that Mr. Harvest was the only one that dissented in his vote. And the rest of the Bold Pilgrim people there voted to join.

(Emphasis added.)

This quoted portion of Montgomery's testimony directly contradicts the trial court's interpretation of Montgomery's testimony. In paragraph nine of the trial court's findings, the court found, "From the testimony of John Montgomery, the Court finds that a decision to combine two congregations requires a majority vote of the members of both congregations." Rather than basing its decision on the majority of the members who were present, however, as Rev. Montgomery explained in his testimony, the trial court made its calculations based on the majority of the members on the church membership rolls, regardless of whether those members were present at the meeting where the vote was taken.

We hold that the trial court erred in its method of calculating the majority vote. The trial court's method of calculation was in direct opposition to the method described by Rev. Montgomery and supported by Rev. Jordan. We, therefore, reverse and remand for entry of an order consistent with this opinion.

Reversed and remanded.

VAUGHT and CRABTREE, JJ., agree.